In the Supreme Court of the United States

OCTOBER TERM, 1963

No. 1057

LESLIE ANDRE EISENHOWER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioner, a professional acrobatic tap dancer, sued under the Federal Tort Claims Act, 28 U.S.C. 1346, for personal injuries sustained when she fell in the course of giving a performance at a Navy base. She alleged that the United States had negligently furnished her a waxed floor on which to dance. The district court held that the United States was not negligent: (1) because it had no reason to expect that a dance such as petitioner's would be performed;

and (2) because petitioner had not shown, in any event, that a waxed floor was unsafe for her performance, (Pet. App. 9a). The court of appeals affirmed.

This case involves only factual questions arising under State law.* There is, accordingly, no occasion for further review by this Court.

Respectfully submitted,

ARCHIBALD COX,
Solicitor General.

JUNE 1964

* The decisions below do not turn, as petitioner contends, on a misinterpretation of State law as to the differences between a licensee and an invitee. Both courts below held squarely that the government exercised all care that it is required to accord an invitee.

☆ U. S. GOVERNMENT PRINTING OFFICE 1964 73134O1 102